



## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2022-0082]

#### Entry-Level Driver Training: Application for Exemption; Western Area Career and Technology Center

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that Western Area Career and Technology Center (WACTC) has requested an exemption from the Theory and Behind-the-Wheel (BTW) instructor requirements contained in the entry-level driver training (ELDT) regulations for one prospective instructor. WACTC seeks an exemption from the requirement that instructors have at least two years of driving experience of the same or higher class and/or the same endorsement level as the commercial motor vehicle (CMV) to be operated to satisfy the instructor requirements under the ELDT regulations.

**DATES:** Comments must be received on or before [Insert date 30 days after publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA-2022-0082 by any of the following methods:

- **Federal eRulemaking Portal:** [\\_www.regulations.gov](https://www.regulations.gov). See the **Public Participation and Request for Comments** section below for further information.
- **Mail:** Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- **Fax:** 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice (FMCSA-2022-0082). Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the **Privacy Act** heading below.

**Docket:** For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, 20590-0001 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations.

**Privacy Act:** In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202-366-2722 or [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Operations, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

## **I. Public Participation and Request for Comments**

FMCSA encourages you to participate by submitting comments and related materials.

### **Submitting Comments**

If you submit a comment, please include the docket number for this notice (FMCSA-2022-0082), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket number, “FMCSA-2022-0082” in the “Search” box, and click “Search.” When the new screen appears, click on “Documents” button, then click the “Comment” button associated with the latest notice posted. Another screen will appear, insert the required information. Choose whether you are submitting your comment as an individual, an organization, or anonymous. Click “Submit Comment.”

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and materials received during the comment period.

## **II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The

Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### **III. Background**

#### ***Current Regulation(s)/Requirements***

The ELDT regulations required compliance by February 7, 2022 and established minimum training standards for individuals applying for certain commercial driver's licenses (CDL) and defined curriculum standards for Theory and BTW training. It also established an online training provider registry (TPR), eligibility requirements for providers to be listed on the TPR, and requirements for instructors. Under 49 CFR 380.713, a training provider must use instructors who meet the definitions of "theory instructor" and "behind-the-wheel (BTW) instructor" in 49 CFR 380.605. The definitions of "theory instructor" and "BTW instructor" in 49 CFR 380.605 require that instructors hold a CDL of the same (or higher) class, with all endorsements necessary to operate the CMV for which training is to be provided; have either: (1) a minimum of 2 years of experience driving a CMV requiring a CDL of the same or higher class and/or the same

endorsement; or (2) at least two years of experience as a BTW CMV instructor; and meet all applicable State qualification requirements for CMV instructors.

### ***Applicant's Request***

WACTC requests an exemption from the requirement in 49 CFR 380.713 that a training provider use instructors who meet the definitions of “theory instructor” and “BTW instructor” in 49 CFR 380.605. WACTC specifies that it would like to use one driver training instructor who does not have two years of required driving experience.

WACTC states that it has been difficult to find qualified instructors. WACTC indicates that it has found one potential instructor, Drew Ley, who is more than capable of implementing a curriculum and training program that not only meets the ELDT regulations but will also ensure safe, knowledgeable, and skilled CMV drivers. WACTC states that Mr. Ley will meet the ELDT regulation’s requirement for two years of driving experience with a Class A CDL in August 2022.

WACTC states that it conducts monthly classes in which students achieve 160 hours of practical training, with four students per class. The ratio of instructor to students (1 to 4) “provides a more individualized training approach as well as the ability to address individual student needs and/or concerns as they may arise.” According to WACTC, the impact of this exemption being denied would be devastating not only to its CDL program, but to the Adult Education Department as a whole. WACTC asserts that its CDL program is the most popular and successful program offered and helps stabilize other struggling programs through a steady stream of revenue.

A copy of the WACTC application for exemption is included in the docket for this notice.

### **IV. Equivalent Level of Safety**

WACTC believes that Mr. Ley makes up for his failure to have two years of required driving experience with his experience with the FMCSA regulations and his

current and previous qualifications. Prior to FMCSA's implementation of the ELDT regulations, Mr. Ley successfully trained four WACTC classes and achieved a 100% student completion rate. As an employee of the Commonwealth of Pennsylvania DOT (PennDOT), Mr. Ley audited and verified third-party testing sites, routes, and CDL examiners to assure compliance with PennDOT regulations. He also assisted in the training and bi-annual reviews of experienced and new CDL examiners and has extensive knowledge operating Class B vehicles with school bus and passenger endorsements. In addition, Mr. Ley has obtained a School Bus Instructor Certification, Certified Inspection Mechanic (class 7), certification as a licensed private Class C instructor, and has had a Class A CDL for a year and a half without restrictions. Furthermore, WACTC indicates that the exemption, if granted, would only be necessary until August 2022, when Mr. Ley will have had his Class A CDL for the required two years.

## **V. Request for Comments**

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on WACTC's application for an exemption from the requirement in 49 CFR 380.713 to use instructors who meet the definitions of "Theory instructor" and "Behind-the-wheel (BTW) instructor" in 49 CFR 380.605. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

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Larry W. Minor,  
Associate Administrator for Policy.

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